IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.926 OF 2005

Bhagwandas Jugal Kishor Bhangadiya ..Appellant
Versus
Dharamchand Chandulal Jain & Ors. ..Respondents

Mr.U.B.Nighot for appellant

CORAM : P.V.KAKADE, J.

DATE : 30TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Malegaon partly allowing the decree in the sense that the decree for specific performance was rejected but alternative prayer of refund of earnest money came to be granted, which was denied by the trial court while dismissing the plaintiff's suit by order dated 20.8.1999.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit seeking relief of specific performance of contract with other

consequential reliefs. The suit came to be dismissed by the trial court holding that the plaintiff had not proved the suit agreement dated 24.8.1985. It was further held that the plaintiff did not prove that on the same day he had delivered a post dated cheque dated 9.10.1985 for Rs.25,000/= to defendant no.1 and he failed to discharge his burden of establishing that he was ready and willing to perform his part of contract and as such suit came to be dismissed. The appeal was carried to the District Court. The lower appellate court judge concurred with the findings recorded by the trial judge holding that the suit agreement dated 24.8.1985 was not proved by the plaintiff and the said document was either forged of suspicious document and as such the plaintiff was held not entitled for specific performance. However, the decree for refund of earnest money came to be granted by the lower court. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The entire suit is based upon the document dated 24.8.1985 i.e. the suit agreement between the parties, which according to the defendant is a forged document as he has denied his signature thereon. The

lower appellate court judge has exhaustively discussed the entire evidence regarding factual aspects involved in the case and has come to the conclusion that the suit document Exh.63 is a suspicious document though signature appears to be that of defendant no.1. However, when the document came in existence in suspicious condition and plaintiff failed to prove its due execution so as to conclude that there was consensus ad idem then the claim of the plaintiff for specific performance of contract based on such a document cannot be granted. I fully agree with the lower court judge.

. It is needless to mention that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court, especially in the present case it is seen that the legal findings recorded by the lower appellate court are based on proper appreciation of available evidence and there is no availability of perversity either in the said judgment.

5. Under the circumstances, I do not see any reason as to why the appellant should be shown any indulgence and hence concurrent findings recorded by both the

courts below are required to be considered. In the result the appeal stands dismissed. Consequently civil application no.1466 of 2005 also stands dismissed.